

**Senator Leonard M. Blackham** proposes the following substitute bill:

**SALES AND USE TAXES - EXEMPTION FOR  
ENERGY RELATED EQUIPMENT AND  
MACHINERY**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

Gregory S. Bell

Dan R. Eastman

Howard A. Stephenson

Mike Dmitrich

Ed P. Mayne

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**LONG TITLE**

**General Description:**

This bill amends the Sales and Use Tax Act to provide an exemption for certain machinery or equipment used to generate electricity.

**Highlighted Provisions:**

This bill:

- ▶ provides an exemption for certain machinery or equipment used to make new or expanding renewable production facilities operational;
- ▶ provides an exemption for certain machinery or equipment used to make new or expanding waste energy facilities operational; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2004.

**Utah Code Sections Affected:**



26 AMENDS:

27 **59-12-102 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003

28 **59-12-104 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003

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30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **59-12-102 (Effective 07/01/04)** is amended to read:

32 **59-12-102 (Effective 07/01/04). Definitions.**

33 As used in this chapter:

34 (1) (a) "Admission or user fees" includes season passes.

35 (b) "Admission or user fees" does not include annual membership dues to private  
36 organizations.

37 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in  
38 Section 59-12-102.1.

39 (3) "Agreement combined tax rate" means the sum of the tax rates:

40 (a) listed under Subsection (4); and

41 (b) that are imposed within a local taxing jurisdiction.

42 (4) "Agreement sales and use tax" means a tax imposed under:

43 (a) Subsection 59-12-103(2)(a)(i);

44 (b) Section 59-12-204;

45 (c) Section 59-12-401;

46 (d) Section 59-12-402;

47 (e) Section 59-12-501;

48 (f) Section 59-12-502;

49 (g) Section 59-12-703;

50 (h) Section 59-12-802;

51 (i) Section 59-12-804;

52 (j) Section 59-12-1001;

53 (k) Section 59-12-1102;

54 (l) Section 59-12-1302; or

55 (m) Section 59-12-1402.

56 (5) "Alcoholic beverage" means a beverage that:

- 57 (a) is suitable for human consumption; and
- 58 (b) contains .5% or more alcohol by volume.
- 59 (6) "Area agency on aging" is as defined in Section 62A-3-101.
- 60 (7) "Authorized carrier" means:
- 61 (a) in the case of vehicles operated over public highways, the holder of credentials
- 62 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 63 Plan and the International Fuel Tax Agreement;
- 64 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 65 certificate or air carrier's operating certificate; or
- 66 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 67 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 68 (8) (a) Except as provided in Subsection (8)(b), "biomass energy" means any of the
- 69 following that is used as the primary source of energy to produce electricity:
- 70 (i) material from a plant or tree; or
- 71 (ii) other organic matter that is available on a renewable basis, including:
- 72 (A) slash and brush from forests and woodlands;
- 73 (B) animal waste;
- 74 (C) methane produced:
- 75 (I) at landfills; or
- 76 (II) as a byproduct of the treatment of wastewater residuals;
- 77 (D) aquatic plants; and
- 78 (E) agricultural products.
- 79 (b) "Biomass energy" does not include:
- 80 (i) black liquor;
- 81 (ii) treated woods; or
- 82 (iii) biomass from municipal solid waste other than methane produced:
- 83 (A) at landfills; or
- 84 (B) as a byproduct of the treatment of wastewater residuals.
- 85 [~~8~~] (9) "Certified automated system" means software certified by the governing board
- 86 of the agreement in accordance with Section 59-12-102.1 that:
- 87 (a) calculates the agreement sales and use tax imposed within a local taxing

88 jurisdiction:

89 (i) on a transaction; and

90 (ii) in the states that are members of the agreement;

91 (b) determines the amount of agreement sales and use tax to remit to a state that is a

92 member of the agreement; and

93 (c) maintains a record of the transaction described in Subsection [~~(8)~~] (9)(a)(i).

94 [~~(9)~~] (10) "Certified service provider" means an agent certified:

95 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;

96 and

97 (b) to perform all of a seller's sales and use tax functions for an agreement sales and

98 use tax.

99 [~~(10)~~] (11) (a) Subject to Subsection [~~(10)~~] (11)(b), "clothing" means all human

100 wearing apparel suitable for general use.

101 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

102 commission shall make rules:

103 (i) listing the items that constitute "clothing"; and

104 (ii) that are consistent with the list of items that constitute "clothing" under the

105 agreement.

106 [~~(11)~~] (12) (a) For purposes of Subsection 59-12-104 (42), "coin-operated amusement  
107 device" means:

108 (i) a coin-operated amusement, skill, or ride device;

109 (ii) that is not controlled through seller-assisted, over-the-counter, sales of tokens; and

110 (iii) includes a music machine, pinball machine, billiard machine, video game machine,  
111 arcade machine, and a mechanical or electronic skill game or ride.

112 (b) For purposes of Subsection 59-12-104 (42), "coin-operated amusement device"  
113 does not mean a coin-operated amusement device possessing a coinage mechanism that:

114 (i) accepts and registers multiple denominations of coins; and

115 (ii) allows the seller to collect the sales and use tax at the time an amusement device is  
116 activated and operated by a person inserting coins into the device.

117 [~~(12)~~] (13) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or  
118 other fuels that does not constitute industrial use under Subsection [~~(30)~~] (33) or residential use

119 under Subsection [~~(54)~~] (59).

120 [~~(13)~~] (14) (a) "Common carrier" means a person engaged in or transacting the  
121 business of transporting passengers, freight, merchandise, or other property for hire within this  
122 state.

123 (b) (i) "Common carrier" does not include a person who, at the time the person is  
124 traveling to or from that person's place of employment, transports a passenger to or from the  
125 passenger's place of employment.

126 (ii) For purposes of Subsection [~~(13)~~] (14)(b)(i), in accordance with Title 63, Chapter  
127 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what  
128 constitutes a person's place of employment.

129 [~~(14)~~] (15) "Component part" includes:

130 (a) poultry, dairy, and other livestock feed, and their components;

131 (b) baling ties and twine used in the baling of hay and straw;

132 (c) fuel used for providing temperature control of orchards and commercial  
133 greenhouses doing a majority of their business in wholesale sales, and for providing power for  
134 off-highway type farm machinery; and

135 (d) feed, seeds, and seedlings.

136 [~~(15)~~] (16) "Computer" means an electronic device that accepts information:

137 (a) (i) in digital form; or

138 (ii) in a form similar to digital form; and

139 (b) manipulates that information for a result based on a sequence of instructions.

140 [~~(16)~~] (17) "Computer software" means a set of coded instructions designed to cause:

141 (a) a computer to perform a task; or

142 (b) automatic data processing equipment to perform a task.

143 [~~(17)~~] (18) "Construction materials" means any tangible personal property that will be  
144 converted into real property.

145 [~~(18)~~] (19) "Delivered electronically" means delivered to a purchaser by means other  
146 than tangible storage media.

147 [~~(19)~~] (20) (a) "Delivery charge" means a charge:

148 (i) by a seller of:

149 (A) tangible personal property; or

150 (B) services; and  
151 (ii) for preparation and delivery of the tangible personal property or services described  
152 in Subsection [~~(19)~~] (20)(a)(i) to a location designated by the purchaser.

153 (b) "Delivery charge" includes a charge for the following:

- 154 (i) transportation;
- 155 (ii) shipping;
- 156 (iii) postage;
- 157 (iv) handling;
- 158 (v) crating; or
- 159 (vi) packing.

160 [~~(20)~~] (21) "Dietary supplement" means a product, other than tobacco, that:

- 161 (a) is intended to supplement the diet;
- 162 (b) contains one or more of the following dietary ingredients:
  - 163 (i) a vitamin;
  - 164 (ii) a mineral;
  - 165 (iii) an herb or other botanical;
  - 166 (iv) an amino acid;
  - 167 (v) a dietary substance for use by humans to supplement the diet by increasing the total

168 dietary intake; or

- 169 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient  
170 described in Subsections [~~(20)~~] (21)(b)(i) through (v);

171 (c) (i) except as provided in Subsection [~~(20)~~] (21)(c)(ii), is intended for ingestion in:

- 172 (A) tablet form;
- 173 (B) capsule form;
- 174 (C) powder form;
- 175 (D) softgel form;
- 176 (E) gelcap form; or
- 177 (F) liquid form; or

178 (ii) notwithstanding Subsection [~~(20)~~] (21)(c)(i), if the product is not intended for  
179 ingestion in a form described in Subsections [~~(20)~~] (21)(c)(i)(A) through (F), is not  
180 represented:

- 181 (A) as conventional food; and
- 182 (B) for use as a sole item of:
  - 183 (I) a meal; or
  - 184 (II) the diet; and
- 185 (d) is required to be labeled as a dietary supplement:
  - 186 (i) identifiable by the "Supplemental Facts" box found on the label; and
  - 187 (ii) as required by 21 C.F.R. Sec. 101.36.
- 188 [~~(21)~~] (22) (a) "Direct mail" means printed material delivered or distributed by United
- 189 States mail or other delivery service:
  - 190 (i) to:
    - 191 (A) a mass audience; or
    - 192 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
  - 193 (ii) if the cost of the printed material is not billed directly to the recipients.
- 194 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 195 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 196 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 197 single address.
- 198 [~~(22)~~] (23) (a) "Drug" means a compound, substance, or preparation, or a component of
- 199 a compound, substance, or preparation that is:
  - 200 (i) recognized in:
    - 201 (A) the official United States Pharmacopoeia;
    - 202 (B) the official Homeopathic Pharmacopoeia of the United States;
    - 203 (C) the official National Formulary; or
    - 204 (D) a supplement to a publication listed in Subsections [~~(22)~~] (23)(a)(i)(A) through
    - 205 (C);
  - 206 (ii) intended for use in the:
    - 207 (A) diagnosis of disease;
    - 208 (B) cure of disease;
    - 209 (C) mitigation of disease;
    - 210 (D) treatment of disease; or
    - 211 (E) prevention of disease; or

- 212 (iii) intended to affect:
- 213 (A) the structure of the body; or
- 214 (B) any function of the body.
- 215 (b) "Drug" does not include:
- 216 (i) food and food ingredients;
- 217 (ii) a dietary supplement;
- 218 (iii) an alcoholic beverage; or
- 219 (iv) a prosthetic device.
- 220 [~~23~~] (24) (a) Except as provided in Subsection [~~23~~] (24)(c), "durable medical
- 221 equipment" means equipment that:
- 222 (i) can withstand repeated use;
- 223 (ii) is primarily and customarily used to serve a medical purpose;
- 224 (iii) generally is not useful to a person in the absence of illness or injury;
- 225 (iv) is not worn in or on the body; and
- 226 (v) is listed as eligible for payment under:
- 227 (A) Title XVIII of the federal Social Security Act; or
- 228 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 229 Act.
- 230 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 231 equipment described in Subsection [~~23~~] (24)(a).
- 232 (c) Notwithstanding Subsection [~~23~~] (24)(a), "durable medical equipment" does not
- 233 include mobility enhancing equipment.
- 234 [~~24~~] (25) "Electronic" means:
- 235 (a) relating to technology; and
- 236 (b) having:
- 237 (i) electrical capabilities;
- 238 (ii) digital capabilities;
- 239 (iii) magnetic capabilities;
- 240 (iv) wireless capabilities;
- 241 (v) optical capabilities;
- 242 (vi) electromagnetic capabilities; or

- 243 (vii) capabilities similar to Subsections [~~(24)~~] (25)(b)(i) through (vi).  
244 [~~(25)~~] (26) (a) "Food and food ingredients" means substances:  
245 (i) regardless of whether the substances are in:  
246 (A) liquid form;  
247 (B) concentrated form;  
248 (C) solid form;  
249 (D) frozen form;  
250 (E) dried form; or  
251 (F) dehydrated form; and  
252 (ii) that are:  
253 (A) sold for:  
254 (I) ingestion by humans; or  
255 (II) chewing by humans; and  
256 (B) consumed for the substance's:  
257 (I) taste; or  
258 (II) nutritional value.  
259 (b) "Food and food ingredients" does not include:  
260 (i) an alcoholic beverage;  
261 (ii) tobacco; or  
262 (iii) prepared food.  
263 [~~(26)~~] (27) (a) "Fundraising sales" means sales:  
264 (i) (A) made by a school; or  
265 (B) made by a school student;  
266 (ii) that are for the purpose of raising funds for the school to purchase equipment,  
267 materials, or provide transportation; and  
268 (iii) that are part of an officially sanctioned school activity.  
269 (b) For purposes of Subsection [~~(26)~~] (27)(a)(iii), "officially sanctioned school activity"  
270 means a school activity:  
271 (i) that is conducted in accordance with a formal policy adopted by the school or school  
272 district governing the authorization and supervision of fundraising activities;  
273 (ii) that does not directly or indirectly compensate an individual teacher or other

274 educational personnel by direct payment, commissions, or payment in kind; and

275 (iii) the net or gross revenues from which are deposited in a dedicated account

276 controlled by the school or school district.

277 (28) "Geothermal energy" means energy contained in heat that continuously flows

278 outward from the earth that is used as the sole source of energy to produce electricity.

279 [~~27~~] (29) "Governing board of the agreement" means the governing board of the

280 agreement that is:

281 (a) authorized to administer the agreement; and

282 (b) established in accordance with the agreement.

283 [~~28~~] (30) (a) "Hearing aid" means:

284 (i) an instrument or device having an electronic component that is designed to:

285 (A) (I) improve impaired human hearing; or

286 (II) correct impaired human hearing; and

287 (B) (I) be worn in the human ear; or

288 (II) affixed behind the human ear;

289 (ii) an instrument or device that is surgically implanted into the cochlea; or

290 (iii) a telephone amplifying device.

291 (b) "Hearing aid" does not include:

292 (i) except as provided in Subsection [~~28~~] (30)(a)(i)(B) or [~~28~~] (30)(a)(ii), an

293 instrument or device having an electronic component that is designed to be worn on the body;

294 (ii) except as provided in Subsection [~~28~~] (30)(a)(iii), an assistive listening device or

295 system designed to be used by one individual, including:

296 (A) a personal amplifying system;

297 (B) a personal FM system;

298 (C) a television listening system; or

299 (D) a device or system similar to a device or system described in Subsections [~~28~~]

300 (30)(b)(ii)(A) through (C); or

301 (iii) an assistive listening device or system designed to be used by more than one

302 individual, including:

303 (A) a device or system installed in:

304 (I) an auditorium;

- 305 (II) a church;
- 306 (III) a conference room;
- 307 (IV) a synagogue; or
- 308 (V) a theater; or
- 309 (B) a device or system similar to a device or system described in Subsections [~~(28)~~]
- 310 ~~(30)~~(b)(iii)(A)(I) through (V).

311 [~~(29)~~] (31) (a) "Hearing aid accessory" means a hearing aid:

- 312 (i) component;
- 313 (ii) attachment; or
- 314 (iii) accessory.

315 (b) "Hearing aid accessory" includes:

- 316 (i) a hearing aid neck loop;
- 317 (ii) a hearing aid cord;
- 318 (iii) a hearing aid ear mold;
- 319 (iv) hearing aid tubing;
- 320 (v) a hearing aid ear hook; or
- 321 (vi) a hearing aid remote control.

322 (c) "Hearing aid accessory" does not include:

- 323 (i) a component, attachment, or accessory designed to be used only with an:
- 324 (A) instrument or device described in Subsection [~~(28)~~] (30)(b)(i); or
- 325 (B) assistive listening device or system described in Subsection [~~(28)~~] (30)(b)(ii) or
- 326 (iii); or
- 327 (ii) a hearing aid battery.

328 (32) "Hydroelectric energy" means water used as the sole source of energy to produce

329 electricity.

330 [~~(30)~~] (33) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,

331 or other fuels:

- 332 (a) in mining or extraction of minerals;
- 333 (b) in agricultural operations to produce an agricultural product up to the time of
- 334 harvest or placing the agricultural product into a storage facility, including:
- 335 (i) commercial greenhouses;

336 (ii) irrigation pumps;  
337 (iii) farm machinery;  
338 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not  
339 registered under Title 41, Chapter 1a, Part 2, Registration; and  
340 (v) other farming activities;  
341 (c) in manufacturing tangible personal property at an establishment described in SIC  
342 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal  
343 Executive Office of the President, Office of Management and Budget; or  
344 (d) by a scrap recycler if:  
345 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process  
346 one or more of the following items into prepared grades of processed materials for use in new  
347 products:  
348 (A) iron;  
349 (B) steel;  
350 (C) nonferrous metal;  
351 (D) paper;  
352 (E) glass;  
353 (F) plastic;  
354 (G) textile; or  
355 (H) rubber; and  
356 (ii) the new products under Subsection [~~30~~] (33)(d)(i) would otherwise be made with  
357 nonrecycled materials.  
358 [~~31~~] (34) (a) "Lease" or "rental" means a transfer of possession or control of tangible  
359 personal property for:  
360 (i) (A) a fixed term; or  
361 (B) an indeterminate term; and  
362 (ii) consideration.  
363 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the  
364 amount of consideration may be increased or decreased by reference to the amount realized  
365 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue  
366 Code.

367 (c) "Lease" or "rental" does not include:  
368 (i) a transfer of possession or control of property under a security agreement or  
369 deferred payment plan that requires the transfer of title upon completion of the required  
370 payments;  
371 (ii) a transfer of possession or control of property under an agreement:  
372 (A) that requires the transfer of title upon completion of required payments; and  
373 (B) in which the payment of an option price does not exceed the greater of:  
374 (I) \$100; or  
375 (II) 1% of the total required payments; or  
376 (iii) providing tangible personal property along with an operator for a fixed period of  
377 time or an indeterminate period of time if the operator is necessary for equipment to perform as  
378 designed.  
379 (d) For purposes of Subsection [~~31~~] (34)(c)(iii), an operator is necessary for  
380 equipment to perform as designed if the operator's duties exceed the:  
381 (i) set-up of tangible personal property;  
382 (ii) maintenance of tangible personal property; or  
383 (iii) inspection of tangible personal property.  
384 [~~32~~] (35) "Local taxing jurisdiction" means a:  
385 (a) county that is authorized to impose an agreement sales and use tax;  
386 (b) city that is authorized to impose an agreement sales and use tax; or  
387 (c) town that is authorized to impose an agreement sales and use tax.  
388 [~~33~~] (36) "Manufactured home" means any manufactured home or mobile home as  
389 defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.  
390 [~~34~~] (37) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:  
391 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard  
392 Industrial Classification Manual of the federal Executive Office of the President, Office of  
393 Management and Budget; or  
394 (b) a scrap recycler if:  
395 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process  
396 one or more of the following items into prepared grades of processed materials for use in new  
397 products:

- 398 (A) iron;
- 399 (B) steel;
- 400 (C) nonferrous metal;
- 401 (D) paper;
- 402 (E) glass;
- 403 (F) plastic;
- 404 (G) textile; or
- 405 (H) rubber; and

406 (ii) the new products under Subsection [~~(34)~~] (37)(b)(i) would otherwise be made with  
407 nonrecycled materials.

408 [~~(35)~~] (38) "Mobile telecommunications service" is as defined in the Mobile  
409 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

410 [~~(36)~~] (39) (a) Except as provided in Subsection [~~(36)~~] (39)(c), "mobility enhancing  
411 equipment" means equipment that is:

412 (i) primarily and customarily used to provide or increase the ability to move from one  
413 place to another;

414 (ii) appropriate for use in a:

415 (A) home; or

416 (B) motor vehicle;

417 (iii) not generally used by persons with normal mobility; and

418 (iv) listed as eligible for payment under:

419 (A) Title XVIII of the federal Social Security Act; or

420 (B) the state plan for medical assistance under Title XIX of the federal Social Security  
421 Act.

422 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
423 the equipment described in Subsection [~~(36)~~] (39)(a).

424 (c) Notwithstanding Subsection [~~(36)~~] (39)(a), "mobility enhancing equipment" does  
425 not include:

426 (i) a motor vehicle;

427 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor  
428 vehicle manufacturer;

429 (iii) durable medical equipment; or

430 (iv) a prosthetic device.

431 [~~(37)~~] (40) "Model 1 seller" means a seller that has selected a certified service provider  
432 as the seller's agent to perform all of the seller's sales tax functions for agreement sales and use  
433 taxes.

434 [~~(38)~~] (41) "Model 2 seller" means a seller that:

435 (a) except as provided in Subsection [~~(38)~~] (41)(b), has selected a certified automated  
436 system to perform the seller's sales tax functions for agreement sales and use taxes; and

437 (b) notwithstanding Subsection [~~(38)~~] (41)(a), retains responsibility for remitting all of  
438 the sales tax:

439 (i) collected by the seller; and

440 (ii) to the appropriate local taxing jurisdiction.

441 [~~(39)~~] (42) (a) Subject to Subsection [~~(39)~~] (42)(b), "model 3 seller" means a seller that  
442 has:

443 (i) sales in at least five states that are members of the agreement;

444 (ii) total annual sales revenues of at least \$500,000,000;

445 (iii) a proprietary system that calculates the amount of tax:

446 (A) for an agreement sales and use tax; and

447 (B) due to each local taxing jurisdiction; and

448 (iv) entered into a performance agreement with the governing board of the agreement.

449 (b) For purposes of Subsection [~~(39)~~] (42)(a), "model 3 seller" includes an affiliated  
450 group of sellers using the same proprietary system.

451 [~~(40)~~] (43) (a) "Multi-channel video or audio service provider" means any person or  
452 group of persons that:

453 (i) provides multi-channel video or audio service and directly or indirectly owns a  
454 significant interest in the multi-channel video or audio service; or

455 (ii) otherwise controls or is responsible through any arrangement, the management and  
456 operation of the multi-channel video or audio service.

457 (b) "Multi-channel video or audio service provider" includes the following except as  
458 specifically exempted by state or federal law:

459 (i) a cable operator;

- 460 (ii) a CATV provider;
- 461 (iii) a multi-point distribution provider;
- 462 (iv) a MMDS provider;
- 463 (v) a SMATV operator;
- 464 (vi) a direct-to-home satellite service provider; or
- 465 (vii) a DBS provider.

466 [~~(41)~~] (44) "Olympic merchandise" means tangible personal property bearing an  
467 Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology,  
468 trademark, or other copyrighted or protected material, including:

- 469 (a) one or more of the following terms:
  - 470 (i) "Olympic";
  - 471 (ii) "Olympiad"; or
  - 472 (iii) "Citius Altius Fortius";
- 473 (b) the symbol of the International Olympic Committee, consisting of five interlocking  
474 rings;
- 475 (c) the emblem of the International Olympic Committee Corporation;
- 476 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo,  
477 service mark, symbol, terminology, trademark, or other copyrighted or protected material;
- 478 (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by  
479 the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or
- 480 (f) the mascot of the Olympic Winter Games of 2002.

481 [~~(42)~~] (45) (a) "Other fuels" means products that burn independently to produce heat or  
482 energy.

483 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible  
484 personal property.

485 [~~(43)~~] (46) "Person" includes any individual, firm, partnership, joint venture,  
486 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,  
487 city, municipality, district, or other local governmental entity of the state, or any group or  
488 combination acting as a unit.

489 [~~(44)~~] (47) "Place of primary use":

490 (a) for telephone service other than mobile telecommunications service, means the

491 street address representative of where the purchaser's use of the telephone service primarily  
492 occurs, which shall be:

- 493 (i) the residential street address of the purchaser; or
- 494 (ii) the primary business street address of the purchaser; or
- 495 (b) for mobile telecommunications service, is as defined in the Mobile  
496 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

497 [~~45~~] (48) (a) "Prepared food" means:

- 498 (i) food:
  - 499 (A) sold in a heated state; or
  - 500 (B) heated by a seller;
- 501 (ii) two or more food ingredients mixed or combined by the seller for sale as a single  
502 item; or

503 (iii) except as provided in Subsection [~~45~~] (48)(c), food sold with an eating utensil  
504 provided by the seller, including a:

- 505 (A) plate;
- 506 (B) knife;
- 507 (C) fork;
- 508 (D) spoon;
- 509 (E) glass;
- 510 (F) cup;
- 511 (G) napkin; or
- 512 (H) straw.

513 (b) "Prepared food" does not include:

- 514 (i) food that a seller only:
  - 515 (A) cuts;
  - 516 (B) repackages; or
  - 517 (C) pasteurizes; or
- 518 (ii) (A) the following:
  - 519 (I) raw egg;
  - 520 (II) raw fish;
  - 521 (III) raw meat;

522 (IV) raw poultry; or  
523 (V) a food containing an item described in Subsections [~~45~~] (48)(b)(ii)(A)(I) through  
524 (IV); and

525 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the  
526 Food and Drug Administration's Food Code that a consumer cook the items described in  
527 Subsection [~~45~~] (48)(b)(ii)(A) to prevent food borne illness.

528 (c) Notwithstanding Subsection [~~45~~] (48)(a)(iii), an eating utensil provided by the  
529 seller does not include the following used to transport the food:

- 530 (i) a container; or
- 531 (ii) packaging.

532 [~~46~~] (49) "Prescription" means an order, formula, or recipe that is issued:

- 533 (a) (i) orally;
- 534 (ii) in writing;
- 535 (iii) electronically; or
- 536 (iv) by any other manner of transmission; and

537 (b) by a licensed practitioner authorized by the laws of a state.

538 [~~47~~] (50) (a) Except as provided in Subsection [~~47~~] (50)(b)(ii) or (iii), "prewritten  
539 computer software" means computer software that is not designed and developed:

- 540 (i) by the author or other creator of the computer software; and
- 541 (ii) to the specifications of a specific purchaser.

542 (b) "Prewritten computer software" includes:

543 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer  
544 software is not designed and developed:

545 (A) by the author or other creator of the computer software; and

546 (B) to the specifications of a specific purchaser;

547 (ii) notwithstanding Subsection [~~47~~] (50)(a), computer software designed and  
548 developed by the author or other creator of the computer software to the specifications of a  
549 specific purchaser if the computer software is sold to a person other than the purchaser; or

550 (iii) notwithstanding Subsection [~~47~~] (50)(a) and except as provided in Subsection  
551 [~~47~~] (50)(c), prewritten computer software or a prewritten portion of prewritten computer  
552 software:

553 (A) that is modified or enhanced to any degree; and  
554 (B) if the modification or enhancement described in Subsection [~~(47)~~] (50)(b)(iii)(A) is  
555 designed and developed to the specifications of a specific purchaser.  
556 (c) Notwithstanding Subsection [~~(47)~~] (50)(b)(iii), "prewritten computer software"  
557 does not include a modification or enhancement described in Subsection [~~(47)~~] (50)(b)(iii) if  
558 the charges for the modification or enhancement are:  
559 (i) reasonable; and  
560 (ii) separately stated on the invoice or other statement of price provided to the  
561 purchaser.  
562 [~~(48)~~] (51) (a) "Prosthetic device" means a device that is:  
563 (i) worn on or in the body to:  
564 (A) artificially replace a missing portion of the body;  
565 (B) prevent or correct a physical deformity or physical malfunction; or  
566 (C) support a weak or deformed portion of the body; and  
567 (ii) listed as eligible for payment under:  
568 (A) Title XVIII of the federal Social Security Act; or  
569 (B) the state plan for medical assistance under Title XIX of the federal Social Security  
570 Act.  
571 (b) "Prosthetic device" includes:  
572 (i) parts used in the repairs or renovation of a prosthetic device; or  
573 (ii) replacement parts for a prosthetic device.  
574 (c) "Prosthetic device" does not include:  
575 (i) corrective eyeglasses;  
576 (ii) contact lenses;  
577 (iii) hearing aids; or  
578 (iv) dental prostheses.  
579 [~~(49)~~] (52) (a) "Protective equipment" means an item:  
580 (i) for human wear; and  
581 (ii) that is:  
582 (A) designed as protection:  
583 (I) to the wearer against injury or disease; or

- 584 (II) against damage or injury of other persons or property; and  
585 (B) not suitable for general use.
- 586 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
587 commission shall make rules:
- 588 (i) listing the items that constitute "protective equipment"; and  
589 (ii) that are consistent with the list of items that constitute "protective equipment"  
590 under the agreement.
- 591 [~~50~~] (53) (a) "Purchase price" and "sales price" mean the total amount of  
592 consideration:
- 593 (i) valued in money; and  
594 (ii) for which tangible personal property or services are:
- 595 (A) sold;  
596 (B) leased; or  
597 (C) rented.
- 598 (b) "Purchase price" and "sales price" include:
- 599 (i) the seller's cost of the tangible personal property or services sold;  
600 (ii) expenses of the seller, including:
- 601 (A) the cost of materials used;  
602 (B) a labor cost;  
603 (C) a service cost;  
604 (D) interest;  
605 (E) a loss;  
606 (F) the cost of transportation to the seller; or  
607 (G) a tax imposed on the seller;
- 608 (iii) a charge by the seller for any service necessary to complete the sale;  
609 (iv) a delivery charge; or  
610 (v) an installation charge.
- 611 (c) "Purchase price" and "sales price" do not include:
- 612 (i) a discount:
- 613 (A) in a form including:  
614 (I) cash;

- 615 (II) term; or
- 616 (III) coupon;
- 617 (B) that is allowed by a seller;
- 618 (C) taken by a purchaser on a sale; and
- 619 (D) that is not reimbursed by a third party; or
- 620 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 621 provided to the purchaser:
  - 622 (A) the amount of a trade-in;
  - 623 (B) the following from credit extended on the sale of tangible personal property or
  - 624 services:
    - 625 (I) interest charges;
    - 626 (II) financing charges; or
    - 627 (III) carrying charges; or
    - 628 (C) a tax or fee legally imposed directly on the consumer.
- 629 [~~51~~] (54) "Purchaser" means a person to whom:
  - 630 (a) a sale of tangible personal property is made; or
  - 631 (b) a service is furnished.
- 632 [~~52~~] (55) "Regularly rented" means:
  - 633 (a) rented to a guest for value three or more times during a calendar year; or
  - 634 (b) advertised or held out to the public as a place that is regularly rented to guests for
  - 635 value.
- 636 (56) "Renewable energy" means:
  - 637 (a) biomass energy;
  - 638 (b) hydroelectric energy;
  - 639 (c) geothermal energy;
  - 640 (d) solar energy; or
  - 641 (e) wind energy.
- 642 (57) (a) "Renewable energy production facility" means a facility that:
  - 643 (i) uses renewable energy to produce electricity; and
  - 644 (ii) has a production capacity of one or more megawatts.
  - 645 (b) A facility is a renewable energy production facility regardless of whether the

646 facility is:

647 (i) connected to an electric grid; or

648 (ii) located on the premises of an electricity consumer.

649 [~~53~~] (58) "Rental" is as defined in Subsection [~~31~~] (34).

650 [~~54~~] (59) "Residential use" means the use in or around a home, apartment building,  
651 sleeping quarters, and similar facilities or accommodations.

652 [~~55~~] (60) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
653 other than:

654 (a) resale;

655 (b) sublease; or

656 (c) subrent.

657 [~~56~~] (61) (a) "Retailer" means any person engaged in a regularly organized business  
658 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),  
659 and who is selling to the user or consumer and not for resale.

660 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly  
661 engaged in the business of selling to users or consumers within the state.

662 [~~57~~] (62) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
663 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
664 Subsection 59-12-103(1), for consideration.

665 (b) "Sale" includes:

666 (i) installment and credit sales;

667 (ii) any closed transaction constituting a sale;

668 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this  
669 chapter;

670 (iv) any transaction if the possession of property is transferred but the seller retains the  
671 title as security for the payment of the price; and

672 (v) any transaction under which right to possession, operation, or use of any article of  
673 tangible personal property is granted under a lease or contract and the transfer of possession  
674 would be taxable if an outright sale were made.

675 [~~58~~] (63) "Sale at retail" is as defined in Subsection [~~55~~] (60).

676 [~~59~~] (64) "Sale-leaseback transaction" means a transaction by which title to tangible

677 personal property that is subject to a tax under this chapter is transferred:

678 (a) by a purchaser-lessee;

679 (b) to a lessor;

680 (c) for consideration; and

681 (d) if:

682 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

683 of the tangible personal property;

684 (ii) the sale of the tangible personal property to the lessor is intended as a form of

685 financing:

686 (A) for the property; and

687 (B) to the purchaser-lessee; and

688 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

689 is required to:

690 (A) capitalize the property for financial reporting purposes; and

691 (B) account for the lease payments as payments made under a financing arrangement.

692 [~~(60)~~ (65) "Sales price" is as defined in Subsection [~~(50)~~ (53).

693 [~~(61)~~ (66) (a) "Sales relating to schools" means the following sales by, amounts paid

694 to, or amounts charged by a school:

695 (i) sales that are directly related to the school's educational functions or activities

696 including:

697 (A) the sale of:

698 (I) textbooks;

699 (II) textbook fees;

700 (III) laboratory fees;

701 (IV) laboratory supplies; or

702 (V) safety equipment;

703 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

704 that:

705 (I) a student is specifically required to wear as a condition of participation in a

706 school-related event or school-related activity; and

707 (II) is not readily adaptable to general or continued usage to the extent that it takes the

708 place of ordinary clothing;

709 (C) sales of the following if the net or gross revenues generated by the sales are  
710 deposited into a school district fund or school fund dedicated to school meals:

711 (I) food and food ingredients; or

712 (II) prepared food; or

713 (D) transportation charges for official school activities; or

714 (ii) amounts paid to or amounts charged by a school for admission to a school-related  
715 event or school-related activity.

716 (b) "Sales relating to schools" does not include:

717 (i) bookstore sales of items that are not educational materials or supplies;

718 (ii) except as provided in Subsection [~~61~~] (66)(a)(i)(B):

719 (A) clothing;

720 (B) clothing accessories or equipment;

721 (C) protective equipment; or

722 (D) sports or recreational equipment; or

723 (iii) amounts paid to or amounts charged by a school for admission to a school-related  
724 event or school-related activity if the amounts paid or charged are passed through to a person:

725 (A) other than a:

726 (I) school;

727 (II) nonprofit organization authorized by a school board or a governing body of a  
728 private school to organize and direct a competitive secondary school activity; or

729 (III) nonprofit association authorized by a school board or a governing body of a  
730 private school to organize and direct a competitive secondary school activity; and

731 (B) that is required to collect sales and use taxes under this chapter.

732 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
733 commission may make rules defining the term "passed through."

734 [~~62~~] (67) For purposes of this section and Section 59-12-104, "school" means:

735 (a) an elementary school or a secondary school that:

736 (i) is a:

737 (A) public school; or

738 (B) private school; and

- 739 (ii) provides instruction for one or more grades kindergarten through 12; or
- 740 (b) a public school district.
- 741 [~~(63)~~] (68) "Seller" means a person that makes a sale, lease, or rental of:
- 742 (a) tangible personal property; or
- 743 (b) a service.
- 744 [~~(64)~~] (69) (a) "Semiconductor fabricating or processing materials" means tangible
- 745 personal property:
- 746 (i) used primarily in the process of:
- 747 (A) (I) manufacturing a semiconductor; or
- 748 (II) fabricating a semiconductor; or
- 749 (B) maintaining an environment suitable for a semiconductor; or
- 750 (ii) consumed primarily in the process of:
- 751 (A) (I) manufacturing a semiconductor; or
- 752 (II) fabricating a semiconductor; or
- 753 (B) maintaining an environment suitable for a semiconductor.
- 754 (b) "Semiconductor fabricating or processing materials" includes:
- 755 (i) parts used in the repairs or renovations of tangible personal property described in
- 756 Subsection [~~(64)~~] (69)(a); or
- 757 (ii) a chemical, catalyst, or other material used to:
- 758 (A) produce or induce in a semiconductor a:
- 759 (I) chemical change; or
- 760 (II) physical change;
- 761 (B) remove impurities from a semiconductor; or
- 762 (C) improve the marketable condition of a semiconductor.
- 763 [~~(65)~~] (70) "Senior citizen center" means a facility having the primary purpose of
- 764 providing services to the aged as defined in Section 62A-3-101.
- 765 (71) "Solar energy" means the sun used as the sole source of energy for producing
- 766 electricity.
- 767 [~~(66)~~] (72) (a) "Sports or recreational equipment" means an item:
- 768 (i) designed for human use; and
- 769 (ii) that is:

- 770 (A) worn in conjunction with:  
771 (I) an athletic activity; or  
772 (II) a recreational activity; and  
773 (B) not suitable for general use.
- 774 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
775 commission shall make rules:  
776 (i) listing the items that constitute "sports or recreational equipment"; and  
777 (ii) that are consistent with the list of items that constitute "sports or recreational  
778 equipment" under the agreement.
- 779 [~~67~~] (73) "State" means the state of Utah, its departments, and agencies.  
780 [~~68~~] (74) "Storage" means any keeping or retention of tangible personal property or  
781 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose  
782 except sale in the regular course of business.
- 783 [~~69~~] (75) (a) "Tangible personal property" means personal property that:  
784 (i) may be:  
785 (A) seen;  
786 (B) weighed;  
787 (C) measured;  
788 (D) felt; or  
789 (E) touched; or  
790 (ii) is in any manner perceptible to the senses.
- 791 (b) "Tangible personal property" includes:  
792 (i) electricity;  
793 (ii) water;  
794 (iii) gas;  
795 (iv) steam; or  
796 (v) prewritten computer software.
- 797 [~~70~~] (76) (a) "Telephone service" means a two-way transmission:  
798 (i) by:  
799 (A) wire;  
800 (B) radio;

- 801 (C) lightwave; or
- 802 (D) other electromagnetic means; and
- 803 (ii) of one or more of the following:
- 804 (A) a sign;
- 805 (B) a signal;
- 806 (C) writing;
- 807 (D) an image;
- 808 (E) sound;
- 809 (F) a message;
- 810 (G) data; or
- 811 (H) other information of any nature.
- 812 (b) "Telephone service" includes:
- 813 (i) mobile telecommunications service;
- 814 (ii) private communications service; or
- 815 (iii) automated digital telephone answering service.
- 816 (c) "Telephone service" does not include a service or a transaction that a state or a
- 817 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 818 Tax Freedom Act, Pub. L. No. 105-277.
- 819 [~~(71)~~] (77) Notwithstanding where a call is billed or paid, "telephone service address"
- 820 means:
- 821 (a) if the location described in this Subsection [~~(71)~~] (77)(a) is known, the location of
- 822 the telephone service equipment:
- 823 (i) to which a call is charged; and
- 824 (ii) from which the call originates or terminates;
- 825 (b) if the location described in Subsection [~~(71)~~] (77)(a) is not known but the location
- 826 described in this Subsection [~~(71)~~] (77)(b) is known, the location of the origination point of the
- 827 signal of the telephone service first identified by:
- 828 (i) the telecommunications system of the seller; or
- 829 (ii) if the system used to transport the signal is not that of the seller, information
- 830 received by the seller from its service provider; or
- 831 (c) if the locations described in Subsection [~~(71)~~] (77)(a) or (b) are not known, the

832 location of a purchaser's primary place of use.

833 ~~[(72)]~~ (78) (a) "Telephone service provider" means a person that:

834 (i) owns, controls, operates, or manages a telephone service; and

835 (ii) engages in an activity described in Subsection ~~[(72)]~~ (78)(a)(i) for the shared use

836 with or resale to any person of the telephone service.

837 (b) A person described in Subsection ~~[(72)]~~ (78)(a) is a telephone service provider

838 whether or not the Public Service Commission of Utah regulates:

839 (i) that person; or

840 (ii) the telephone service that the person owns, controls, operates, or manages.

841 ~~[(73)]~~ (79) "Tobacco" means:

842 (a) a cigarette;

843 (b) a cigar;

844 (c) chewing tobacco;

845 (d) pipe tobacco; or

846 (e) any other item that contains tobacco.

847 ~~[(74)]~~ (80) (a) "Use" means the exercise of any right or power over tangible personal

848 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that

849 property, item, or service.

850 (b) "Use" does not include the sale, display, demonstration, or trial of that property in

851 the regular course of business and held for resale.

852 ~~[(75)]~~ (81) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,

853 as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and

854 any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.

855 "Vehicle," for purposes of Subsection 59-12-104(35) only, also includes any locomotive,

856 freight car, railroad work equipment, or other railroad rolling stock.

857 ~~[(76)]~~ (82) "Vehicle dealer" means a person engaged in the business of buying, selling,

858 or exchanging vehicles as defined in Subsection ~~[(75)]~~ (81).

859 (83) "Waste energy facility" means a facility that generates electricity:

860 (a) using as the primary source of energy waste materials that would be placed in a

861 landfill or refuse pit if it were not used to generate electricity, including:

862 (i) tires;

863 (ii) waste coal; or  
864 (iii) oil shale; and  
865 (b) in amounts greater than actually required for the operation of the facility.  
866 (84) "Wind energy" means wind used as the sole source of energy to produce  
867 electricity.

868 Section 2. Section **59-12-104 (Effective 07/01/04)** is amended to read:

869 **59-12-104 (Effective 07/01/04). Exemptions.**

870 The following sales and uses are exempt from the taxes imposed by this chapter:

871 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax  
872 under Chapter 13, Motor and Special Fuel Tax Act;

873 (2) sales to the state, its institutions, and its political subdivisions; however, this  
874 exemption does not apply to sales of:

875 (a) construction materials except:

876 (i) construction materials purchased by or on behalf of institutions of the public  
877 education system as defined in Utah Constitution Article X, Section 2, provided the  
878 construction materials are clearly identified and segregated and installed or converted to real  
879 property which is owned by institutions of the public education system; and

880 (ii) construction materials purchased by the state, its institutions, or its political  
881 subdivisions which are installed or converted to real property by employees of the state, its  
882 institutions, or its political subdivisions; or

883 (b) tangible personal property in connection with the construction, operation,  
884 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities  
885 providing additional project capacity, as defined in Section 11-13-103;

886 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

887 (i) the proceeds of each sale do not exceed \$1; and

888 (ii) the seller or operator of the vending machine reports an amount equal to 150% of  
889 the cost of the item described in this Subsection (3)(a) as goods consumed; and

890 (b) Subsection (3)(a) applies to:

891 (i) food and food ingredients; or

892 (ii) prepared food;

893 (4) sales of the following to a commercial airline carrier for in-flight consumption:

- 894 (a) food and food ingredients;
- 895 (b) prepared food; or
- 896 (c) services related to Subsection (4)(a) or (b);
- 897 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 898 in interstate or foreign commerce;
- 899 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 900 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 901 exhibitor, distributor, or commercial television or radio broadcaster;
- 902 (7) sales of cleaning or washing of tangible personal property by a coin-operated
- 903 laundry or dry cleaning machine;
- 904 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or
- 905 charitable institutions in the conduct of their regular religious or charitable functions and
- 906 activities, if the requirements of Section 59-12-104.1 are fulfilled;
- 907 (b) the exemption provided for in Subsection (8)(a) does not apply to the following
- 908 sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
- 909 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
- 910 Code:
- 911 (i) retail sales of Olympic merchandise;
- 912 (ii) except as provided in Subsection (50), admissions or user fees described in
- 913 Subsection 59-12-103(1)(f);
- 914 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
- 915 except for accommodations and services:
- 916 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
- 917 Games of 2002;
- 918 (B) exclusively used by:
- 919 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 920 Olympic Winter Games of 2002; or
- 921 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
- 922 Winter Games of 2002; and
- 923 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
- 924 2002 does not receive reimbursement; or

925 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or  
926 rental of a vehicle:

927 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter  
928 Games of 2002;

929 (B) exclusively used by:

930 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the  
931 Olympic Winter Games of 2002; or

932 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic  
933 Winter Games of 2002; and

934 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of  
935 2002 does not receive reimbursement;

936 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of  
937 this state which are made to bona fide nonresidents of this state and are not afterwards  
938 registered or used in this state except as necessary to transport them to the borders of this state;

939 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

940 (i) the item is intended for human use; and

941 (ii) the purchaser presents a prescription for the item; and

942 (b) (i) Subsection (10)(a) applies to:

943 (A) a drug;

944 (B) a syringe; or

945 (C) a stoma supply; and

946 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
947 commission may by rule define the terms:

948 (A) "syringe"; or

949 (B) "stoma supply";

950 (11) sales or use of property, materials, or services used in the construction of or  
951 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

952 (12) (a) sales of an item described in Subsection (12)(c) served by:

953 (i) the following if the item described in Subsection (12)(c) is not available to the  
954 general public:

955 (A) a church; or

- 956 (B) a charitable institution;
- 957 (ii) an institution of higher education if:
- 958 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 959 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 960 offered by the institution of higher education; or
- 961 (b) sales of an item described in Subsection (12)(c) provided at:
- 962 (i) a medical facility; or
- 963 (ii) a nursing facility; and
- 964 (c) Subsections (12)(a) and (b) apply to:
- 965 (i) food and food ingredients;
- 966 (ii) prepared food; or
- 967 (iii) alcoholic beverages;
- 968 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 969 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 970 which case the tax is based upon:
- 971 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
- 972 or
- 973 (b) in the absence of a bill of sale or other written evidence of value, the then existing
- 974 fair market value of the vehicle or vessel being sold as determined by the commission;
- 975 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
- 976 (i) machinery and equipment:
- 977 (A) used in the manufacturing process;
- 978 (B) having an economic life of three or more years; and
- 979 (C) used:
- 980 (I) to manufacture an item sold as tangible personal property; and
- 981 (II) in new or expanding operations in a manufacturing facility in the state; and
- 982 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 983 (A) have an economic life of three or more years;
- 984 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 985 (C) are used to replace or adapt an existing machine to extend the normal estimated
- 986 useful life of the machine; and

- 987 (D) do not include repairs and maintenance;
- 988 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
- 989 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in  
990 Subsection (14)(a)(ii) is exempt;
- 991 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described  
992 in Subsection (14)(a)(ii) is exempt; and
- 993 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection  
994 (14)(a)(ii) is exempt;
- 995 (c) for purposes of this Subsection (14), the commission shall by rule define the terms  
996 "new or expanding operations" and "establishment"; and
- 997 (d) on or before October 1, 1991, and every five years after October 1, 1991, the  
998 commission shall:
- 999 (i) review the exemptions described in Subsection (14)(a) and make recommendations  
1000 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be  
1001 continued, modified, or repealed; and
- 1002 (ii) include in its report:
- 1003 (A) the cost of the exemptions;
- 1004 (B) the purpose and effectiveness of the exemptions; and
- 1005 (C) the benefits of the exemptions to the state;
- 1006 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 1007 (i) tooling;
- 1008 (ii) special tooling;
- 1009 (iii) support equipment;
- 1010 (iv) special test equipment; or
- 1011 (v) parts used in the repairs or renovations of tooling or equipment described in  
1012 Subsections (15)(a)(i) through (iv); and
- 1013 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 1014 (i) the tooling, equipment, or parts are used or consumed exclusively in the  
1015 performance of any aerospace or electronics industry contract with the United States  
1016 government or any subcontract under that contract; and
- 1017 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

1018 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
1019 by:

1020 (A) a government identification tag placed on the tooling, equipment, or parts; or

1021 (B) listing on a government-approved property record if placing a government

1022 identification tag on the tooling, equipment, or parts is impractical;

1023 (16) intrastate movements of:

1024 (a) freight by common carriers; or

1025 (b) passengers:

1026 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial

1027 Classification Manual of the federal Executive Office of the President, Office of Management  
1028 and Budget;

1029 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard

1030 Industrial Classification Manual of the federal Executive Office of the President, Office of

1031 Management and Budget, if the transportation originates and terminates within a county of the

1032 first, second, or third class; or

1033 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard

1034 Industrial Classification Manual of the federal Executive Office of the President, Office of  
1035 Management and Budget:

1036 (A) a horse-drawn cab; or

1037 (B) a horse-drawn carriage;

1038 (17) sales of newspapers or newspaper subscriptions;

1039 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in  
1040 as full or part payment of the purchase price, except that for purposes of calculating sales or use  
1041 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and  
1042 the tax is based upon:

1043 (i) the bill of sale or other written evidence of value of the vehicle being sold and the  
1044 vehicle being traded in; or

1045 (ii) in the absence of a bill of sale or other written evidence of value, the then existing  
1046 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
1047 commission; and

1048 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the

1049 following items of tangible personal property traded in as full or part payment of the purchase  
1050 price:

1051 (i) money;

1052 (ii) electricity;

1053 (iii) water;

1054 (iv) gas; or

1055 (v) steam;

1056 (19) sprays and insecticides used to control insects, diseases, and weeds for  
1057 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those  
1058 sprays and insecticides used in the processing of the products;

1059 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly  
1060 in farming operations, including sales of irrigation equipment and supplies used for agricultural  
1061 production purposes, whether or not they become part of real estate and whether or not  
1062 installed by farmer, contractor, or subcontractor, but not sales of:

1063 (A) machinery, equipment, materials, and supplies used in a manner that is incidental  
1064 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1065 (B) tangible personal property used in any activities other than farming, such as office  
1066 equipment and supplies, equipment and supplies used in sales or distribution of farm products,  
1067 in research, or in transportation; or

1068 (C) any vehicle required to be registered by the laws of this state, without regard to the  
1069 use to which the vehicle is put; or

1070 (ii) sales of parts used in the repairs or renovations of tangible personal property if the  
1071 tangible personal property is exempt under Subsection (20)(a); or

1072 (b) sales of hay;

1073 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or  
1074 other agricultural produce if sold by a producer during the harvest season;

1075 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued  
1076 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1077 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,  
1078 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,  
1079 wholesaler, or retailer for use in packaging tangible personal property to be sold by that

- 1080 manufacturer, processor, wholesaler, or retailer;
- 1081       (24) property stored in the state for resale;
- 1082       (25) property brought into the state by a nonresident for his or her own personal use or  
1083 enjoyment while within the state, except property purchased for use in Utah by a nonresident  
1084 living and working in Utah at the time of purchase;
- 1085       (26) property purchased for resale in this state, in the regular course of business, either  
1086 in its original form or as an ingredient or component part of a manufactured or compounded  
1087 product;
- 1088       (27) property upon which a sales or use tax was paid to some other state, or one of its  
1089 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
1090 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
1091 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
1092 Act;
- 1093       (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a  
1094 person for use in compounding a service taxable under the subsections;
- 1095       (29) purchases made in accordance with the special supplemental nutrition program for  
1096 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 1097       (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,  
1098 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens  
1099 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification  
1100 Manual of the federal Executive Office of the President, Office of Management and Budget;
- 1101       (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State  
1102 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of  
1103 this state and are not thereafter registered or used in this state except as necessary to transport  
1104 them to the borders of this state;
- 1105       (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah  
1106 where a sales or use tax is not imposed, even if the title is passed in Utah;
- 1107       (33) amounts paid for the purchase of telephone service for purposes of providing  
1108 telephone service;
- 1109       (34) fares charged to persons transported directly by a public transit district created  
1110 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

- 1111 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;
- 1112 (36) (a) 45% of the sales price of any new manufactured home; and
- 1113 (b) 100% of the sales price of any used manufactured home;
- 1114 (37) sales relating to schools and fundraising sales;
- 1115 (38) sales or rentals of durable medical equipment if a person presents a prescription
- 1116 for the durable medical equipment;
- 1117 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 1118 Section 72-11-102; and
- 1119 (b) the commission shall by rule determine the method for calculating sales exempt
- 1120 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;
- 1121 (40) sales to a ski resort of:
- 1122 (a) snowmaking equipment;
- 1123 (b) ski slope grooming equipment;
- 1124 (c) passenger ropeways as defined in Section 72-11-102; or
- 1125 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 1126 described in Subsections (40)(a) through (c);
- 1127 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 1128 (42) sales or rentals of the right to use or operate for amusement, entertainment, or
- 1129 recreation a coin-operated amusement device as defined in Section 59-12-102;
- 1130 (43) sales of cleaning or washing of tangible personal property by a coin-operated car
- 1131 wash machine;
- 1132 (44) sales by the state or a political subdivision of the state, except state institutions of
- 1133 higher education as defined in Section 53B-3-102, of:
- 1134 (a) photocopies; or
- 1135 (b) other copies of records held or maintained by the state or a political subdivision of
- 1136 the state;
- 1137 (45) (a) amounts paid:
- 1138 (i) to a person providing intrastate transportation to an employer's employee to or from
- 1139 the employee's primary place of employment;
- 1140 (ii) by an:
- 1141 (A) employee; or

1142 (B) employer; and  
1143 (iii) pursuant to a written contract between:  
1144 (A) the employer; and  
1145 (B) (I) the employee; or  
1146 (II) a person providing transportation to the employer's employee; and  
1147 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1148 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an  
1149 employee's primary place of employment;  
1150 (46) amounts paid for admission to an athletic event at an institution of higher  
1151 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
1152 20 U.S.C. Sec. 1681 et seq.;

1153 (47) sales of telephone service charged to a prepaid telephone calling card;  
1154 (48) (a) sales of:  
1155 (i) hearing aids;  
1156 (ii) hearing aid accessories; or  
1157 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations  
1158 of hearing aids or hearing aid accessories; and  
1159 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),  
1160 "parts" does not include batteries;

1161 (49) (a) sales made to or by:  
1162 (i) an area agency on aging; or  
1163 (ii) a senior citizen center owned by a county, city, or town; or  
1164 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1165 (50) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as  
1166 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter  
1167 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing  
1168 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the  
1169 International Olympic Committee; and  
1170 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic  
1171 Winter Games of 2002 shall make at least two reports during the 2000 interim:  
1172 (i) to the:

- 1173 (A) Olympic Coordination Committee; and
- 1174 (B) Revenue and Taxation Interim Committee; and
- 1175 (ii) regarding the status of:
  - 1176 (A) agreements relating to the funding of public safety services for the Olympic Winter
  - 1177 Games of 2002;
  - 1178 (B) agreements relating to the funding of services, other than public safety services, for
  - 1179 the Olympic Winter Games of 2002;
  - 1180 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by
  - 1181 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;
  - 1182 (D) other issues as requested by the Olympic Coordination Committee or the Revenue
  - 1183 and Taxation Interim Committee; or
  - 1184 (E) a combination of Subsections (50)(b)(ii)(A) through (D);
- 1185 (51) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
- 1186 (51)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
- 1187 whether the semiconductor fabricating or processing materials:
  - 1188 (i) actually come into contact with a semiconductor; or
  - 1189 (ii) ultimately become incorporated into real property;
- 1190 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
- 1191 described in Subsection (51)(a) is exempt;
- 1192 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
- 1193 described in Subsection (51)(a) is exempt; and
- 1194 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
- 1195 lease described in Subsection (51)(a) is exempt; and
- 1196 (c) each year on or before the November interim meeting, the Revenue and Taxation
- 1197 Interim Committee shall:
  - 1198 (i) review the exemption described in this Subsection (51) and make recommendations
  - 1199 concerning whether the exemption should be continued, modified, or repealed; and
  - 1200 (ii) include in the review under this Subsection (51)(c):
    - 1201 (A) the cost of the exemption;
    - 1202 (B) the purpose and effectiveness of the exemption; and
    - 1203 (C) the benefits of the exemption to the state;

1204 (52) an amount paid by or charged to a purchaser for accommodations and services  
1205 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
1206 59-12-104.2;

1207 (53) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
1208 sports event registration certificate in accordance with Section 41-3-306 for the event period  
1209 specified on the temporary sports event registration certificate;

1210 (54) sales or uses of electricity, if the sales or uses are:

1211 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
1212 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
1213 source, as designated in the tariff by the Public Service Commission of Utah; and

1214 (b) for an amount of electricity that is:

1215 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
1216 under the tariff described in Subsection (54)(a); and

1217 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
1218 Subsection (54)(a) that may be purchased under the tariff described in Subsection (54)(a);

1219 (55) sales or rentals of mobility enhancing equipment if a person presents a  
1220 prescription for the mobility enhancing equipment;

1221 (56) sales of water in a:

1222 (a) pipe;

1223 (b) conduit;

1224 (c) ditch; or

1225 (d) reservoir;

1226 (57) sales of currency or coinage that constitute legal tender of the United States or of a  
1227 foreign nation;

1228 (58) (a) sales of an item described in Subsection (58)(b) if the item:

1229 (i) does not constitute legal tender of any nation; and

1230 (ii) has a gold, silver, or platinum content of 80% or more; and

1231 (b) Subsection (58)(a) applies to a gold, silver, or platinum:

1232 (i) ingot;

1233 (ii) bar;

1234 (iii) medallion; or

- 1235 (iv) decorative coin;
- 1236 (59) amounts paid on a sale-leaseback transaction; [~~and~~]
- 1237 (60) sales of a prosthetic device:
- 1238 (a) for use on or in a human;
- 1239 (b) for which a prescription is issued; and
- 1240 (c) to a person that presents a prescription for the prosthetic device[-];
- 1241 (61) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
- 1242 or before June 30, 2009, of machinery or equipment that:
- 1243 (i) is leased or purchased for or by a facility that:
- 1244 (A) is a renewable energy production facility;
- 1245 (B) is located in the state; and
- 1246 (C) (I) becomes operational on or after July 1, 2004; or
- 1247 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 1248 2004 as a result of the use of the machinery or equipment:
- 1249 (ii) has an economic life of five or more years; and
- 1250 (iii) is used to make the facility or the increase in capacity of the facility described in
- 1251 Subsection (61)(a)(i) operational up to the point of interconnection with an existing
- 1252 transmission grid including:
- 1253 (A) a wind turbine;
- 1254 (B) generating equipment;
- 1255 (C) a control and monitoring system;
- 1256 (D) a power line;
- 1257 (E) substation equipment;
- 1258 (F) lighting;
- 1259 (G) fencing;
- 1260 (H) pipes; or
- 1261 (I) other equipment used for locating a power line or pole; and
- 1262 (b) this Subsection (61) does not apply to:
- 1263 (i) machinery or equipment used in construction of:
- 1264 (A) a new renewable energy production facility; or
- 1265 (B) the increase in the capacity of a renewable energy production facility;

1266 (ii) contracted services required for construction and routine maintenance activities;  
1267 and  
1268 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1269 of the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or  
1270 acquired after:  
1271 (A) the renewable energy production facility described in Subsection (61)(a)(i) is  
1272 operational as described in Subsection (61)(a)(iii); or  
1273 (B) the increased capacity described in Subsection (61)(a)(i) is operational as described  
1274 in Subsection (61)(a)(iii);  
1275 (62) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
1276 or before June 30, 2009, of machinery or equipment that:  
1277 (i) is leased or purchased for or by a facility that:  
1278 (A) is a waste energy production facility;  
1279 (B) is located in the state; and  
1280 (C) (I) becomes operational on or after July 1, 2004; or  
1281 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
1282 2004 as a result of the use of the machinery or equipment;  
1283 (ii) has an economic life of five or more years; and  
1284 (iii) is used to make the facility or the increase in capacity of the facility described in  
1285 Subsection (62)(a)(i) operational up to the point of interconnection with an existing  
1286 transmission grid including:  
1287 (A) generating equipment;  
1288 (B) a control and monitoring system;  
1289 (C) a power line;  
1290 (D) substation equipment;  
1291 (E) lighting;  
1292 (F) fencing;  
1293 (G) pipes; or  
1294 (H) other equipment used for locating a power line or pole; and  
1295 (b) this Subsection (62) does not apply to:  
1296 (i) machinery or equipment used in construction of:

1297           (A) a new waste energy facility; or  
1298           (B) the increase in the capacity of a waste energy facility;  
1299           (ii) contracted services required for construction and routine maintenance activities;  
1300   and  
1301           (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1302   described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:  
1303           (A) the waste energy facility described in Subsection (62)(a)(i) is operational as  
1304   described in Subsection (62)(a)(iii); or  
1305           (B) the increased capacity described in Subsection (62)(a)(i) is operational as described  
1306   in Subsection (62)(a)(iii).  
1307           Section 3. **Effective date.**  
1308           This bill takes effect on July 1, 2004.